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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-198

13 **RHONDA M. ULIBARRI**  
14 **AKA RHONDA M. ULIBARRI**  
15 **21818 Esaws Road**  
**Apple Valley, CA 92307**

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

16 **Registered Nurse License No. 600526**

17 Respondent.

18 **FINDINGS OF FACT**

19 1. On or about September 20, 2012, Complainant Louise R. Bailey, M.Ed., R.N., in her  
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs, filed Accusation No. 2013-198 against Rhonda M. Ulibarri also known as  
22 Rhonda M. Ulibarri (Respondent) before the Board of Registered Nursing. (Accusation attached  
23 as Exhibit A.)

24 2. On or about June 12, 2002, the Board of Registered Nursing (Board) issued  
25 Registered Nurse License No. 600526 to Respondent. The Registered Nurse License was in full  
26 force and effect at all times relevant to the charges in the Accusation No. 2013-198, expired on  
27 April 30, 2012, and has not been renewed.  
28

3. On or about September 20, 2012, Respondent was served, by First Class Mail and certified mail, copies of the Accusation No. 2013-198, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Respondent's address of record which, pursuant to California Code of Regulations, title 16, section 1409.1, is required to be reported and maintained with the Board. Respondent's address of record was and is:

21818 Esaws Road  
Apple Valley, CA 92307.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

5. The aforementioned certified mail documents were returned by the U.S. Postal Service as "Unclaimed" and "Unable to Forward."

6. Government Code section 11506 states, in pertinent part:

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

7. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2013-198.

8. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

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9. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Board's offices regarding the allegations contained in Accusation No. 2013-198, finds that the charges and allegations in Accusation No. 2013-198, are separately and severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$3,120.00 as of November 14, 2012.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Rhonda Ulibarri aka Rhonda M. Ulibarri has subjected her Registered Nurse License No. 600526 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Registered Nursing is authorized to revoke Respondent's Registered Nurse License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:

a. Respondent is subject to disciplinary action under Business and Professions Code section 2762, subdivision (b), on the grounds of unprofessional conduct, in that, Respondent has used controlled substances to an extent or in a manner dangerous to herself or any other person or the public, or to the extent that such use impairs her ability to conduct with safety the practice authorized by her license, by reason of the following facts:

(1) On or about January 26, 2012, while on duty as a registered nurse at the Arrowhead Regional Medical Center, Respondent removed two (2) vials of 50 ml of Benadryl from the Pyxis system (a computerized medication system) without a physician order. When questioned by a managing nurse about the diverted medications, she could not provide a reasonable explanation. Respondent appeared to be under the influence as demonstrated by Respondent's slurred speech, loss of memory and irrational responses when questioned.

1 Respondent was asked to submit to a drug screen which she declined to provide. Respondent  
2 resigned from Arrowhead Regional Medical Center a few days later while the matter was under  
3 investigation.

4 (2) Thereafter, on or about May 23, 2012, following the Board's referral, Respondent  
5 enrolled in the Board's Diversion program, administered by Maximus. During an intake  
6 interview on May 10, 2012, Respondent admitted to Maximus counselors to abusing opiates for  
7 the last seven (7) years. She admitted to using Norco, Ativan and Valium. She also admitted to  
8 using Norco up until, and including, August 5, 2011. Respondent also admitted that she was  
9 hospitalized on or about May 14, 2011 for detoxification of Valium. On or about June 4, 2012,  
10 Respondent missed a clinical assessment. On that same date, when a staff member of Maximus  
11 spoke with Respondent on the phone, Respondent had slurred speech, was incoherent, and  
12 admitted to use of Valium up to and including June 2, 2012.

13 b. Respondent is also subject to disciplinary action under Business and Professions  
14 Code section 2761, subdivision (a), on grounds of unprofessional conduct, as defined in Business  
15 and Professions Code section 2762, subdivisions (a), for violating Health and Safety Code  
16 sections 11170, 11171 and 11173, subdivision (a), and/or 11350 subdivision (a), by reason of the  
17 following:

18 (1) On or about January 26, 2012, while on duty as a registered nurse at the  
19 Arrowhead Regional Medical Center, Respondent unlawfully obtained two (2) vials of 50 ml of  
20 Benadryl from the Pyxis system without a doctor's order, as more fully set forth in paragraph  
21 3a(1) above.

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**RESPONDENT'S TERMINATION FROM BOARD'S  
DIVERSION PROGRAM AS A PUBLIC RISK**

4. On or about May 23, 2012, Respondent began participating in the Board's Diversion program, administered by Maximus. Respondent agreed to cooperate with an outpatient treatment program, including 12-step and support group requirements, and to abstain from alcohol and all other mind-altering drugs, except as prescribed by a physician. Respondent was also required to submit to drug screens to test for the presence of alcohol and/or drugs.

5. On or about June 11, 2012, Respondent was designated a public risk and terminated from the Diversion program for failure to comply with the program, including but not limited to the following:

- (1) Taking medication not approved by the Diversion Program;
- (2) Failing to provide a taper prescription for the Valium she admitted she was taking;
- (3) Failing to attend clinical assessments;
- (4) Failing to communicate with staff at Maximus;
- (5) Failing to return required forms;
- (6) Failing to attend daily meetings;
- (7) Failing to attend nurse support group;
- (8) Failure to initiate treatment for chemical dependency;
- (9) Failure to set up First Lab account;
- (10) Failure to enter outpatient treatment portion of the Diversion program.

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ORDER

IT IS SO ORDERED that Registered Nurse License No. 600526, heretofore issued to Respondent Rhonda Ulibarri, also known as Rhonda M. Ulibarri, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on MAY 2, 2013.

It is so ORDERED APRIL 2, 2013

  
FOR THE BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS

51192478\_2.DOC  
DOJ Matter ID:LA2012507397

Attachment:  
Exhibit A: Accusation

# Exhibit A

Accusation

1 KAMALA D. HARRIS  
Attorney General of California  
2 GREGORY J. SALUTE  
Supervising Deputy Attorney General  
3 CRISTINA FELIX  
Deputy Attorney General  
4 State Bar No. 195663  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2455  
6 Facsimile: (213) 897-2804  
E-mail: Cristina.Felix@doj.ca.gov  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2013-198**

13 **RHONDA ULIBARRI**  
14 **AKA RHONDA M. ULIBARRI**  
21818 Esaws Road  
Apple Valley, CA 92307

**A C C U S A T I O N**

15 **Registered Nurse License No. 600526**

16 Respondent.

17  
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about June 12, 2002, the Board of Registered Nursing issued Registered Nurse  
24 License Number 600526 to Rhonda Ulibarri also known as Rhonda M. Ulibarri (Respondent).  
25 The Registered Nurse License was in full force and effect at all times relevant to the charges  
26 brought herein and expired on April 30, 2012, and has not been renewed.

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1           8.     Section 2762 of the Code states:

2            "In addition to other acts constituting unprofessional conduct within the meaning of this  
3 chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this  
4 chapter to do any of the following:

5           (a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed  
6 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or  
7 administer to another, any controlled substance as defined in Division 10 (commencing with  
8 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as  
9 defined in Section 4022.

10          (b) Use any controlled substance as defined in Division 10 (commencing with Section  
11 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
12 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
13 himself or herself, any other person, or the public or to the extent that such use impairs his or her  
14 ability to conduct with safety to the public the practice authorized by his or her license.

15          ...

16          (c) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any  
17 hospital, patient, or other record pertaining to the substances described in subdivision (a) of this  
18 section."

19           9.     Section 2770.11 of the Code states:

20            "(a) Each registered nurse who requests participation in a diversion program shall agree  
21 to cooperate with the rehabilitation program designed by the committee and approved by the  
22 program manager. Any failure to comply with the provisions of rehabilitation program may  
23 result in termination of the registered nurse's participation in a program. The name and license  
24 number of a registered nurse who is terminated for any reason, other than successful completion,  
25 shall be reported to the board's enforcement program.

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(b) If the program manager determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the program manager shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding."

10. Health and Safety Code section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for himself.

11. Health and Safety Code Section 11171 provides:

"No person shall prescribe, administer, or furnish a controlled substance except under the conditions and in the manner provided by this division."

12. Health and Safety Code Section 11173 provides:

"(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

13. Health and Safety Code Section 11350 provides:

"(a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison."

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1 **COST RECOVERY**

2 14. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licensee found to have committed a violation or violations of  
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 **DEFINITIONS**

7 15. **Ativan**, a brand name for Lorazepam, a benzodiazepine derivative, is a Schedule IV  
8 controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(16),  
9 and is categorized as a dangerous drug pursuant to Business and Professions Code section 4022.

10 16. **Benadryl**, is the trade name for the drug Diphenhydramine, which is classified as an  
11 antihistamine, sedative, Anti-Parkinson, Anaphylaxis. In 50 mg capsules or tablets this is a  
12 prescription drug and considered a dangerous drug pursuant to Business and Professions Code  
13 section 4022.

14 17. **Valium**, a trade name for the chemical substance diazepam, a Benzodiazepam  
15 derivative, is a Schedule IV controlled substance as designated by Health and Safety Code section  
16 11057(d)(9) and is categorized as a dangerous drug pursuant to Business and Professions Code  
17 section 4022.

18 18. **Norco** and **Vicodin** are trade names for the narcotic substance hydrocodone or  
19 dihydrocodeinone with the non-narcotic substance acetaminophen. They are Schedule III  
20 controlled substances pursuant to Health and Safety Code section 11056(e)(4), and are dangerous  
21 drugs within the meaning of Business and Professions Code section 4022.

22 **RESPONDENT'S TERMINATION FROM BOARD'S**  
23 **DIVERSION PROGRAM AS A PUBLIC RISK**

24 19. On or about May 23, 2012, Respondent began participating in the Board's Diversion  
25 program, administered by Maximus. Respondent agreed to cooperate with an outpatient  
26 treatment program, including 12-step and support group requirements, and to abstain from  
27 alcohol and all other mind-altering drugs, except as prescribed by a physician. Respondent was  
28 also required to submit to drug screens to test for the presence of alcohol and/or drugs.

20. On or about June 11, 2012, Respondent was designated a public risk and terminated from the Diversion program for failure to comply with the program, including but not limited to the following:

- (1) Taking medication not approved by the Diversion Program;
- (2) Failing to provide a taper prescription for the Valium she admitted she was taking;
- (3) Failing to attend clinical assessments;
- (4) Failing to communicate with staff at Maximus;
- (5) Failing to return required forms;
- (6) Failing to attend daily meetings;
- (7) Failing to attend nurse support group;
- (8) Failure to initiate treatment for chemical dependency;
- (9) Failure to set up First Lab account;
- (10) Failure to enter outpatient treatment portion of the Diversion program.

#### **FIRST CAUSE FOR DISCIPLINE**

##### **(Use of Controlled Substance(s) to the Extent That Use Impairs Safety)**

21. Respondent is subject to disciplinary action under Business and Professions Code section 2762, subdivision (b), on the grounds of unprofessional conduct, in that, Respondent has used controlled substances to an extent or in a manner dangerous to herself or any other person or the public, or to the extent that such use impairs her ability to conduct with safety the practice authorized by her license, by reason of the following facts:

a. On or about January 26, 2012, while on duty as a registered nurse at the Arrowhead Regional Medical Center, Respondent removed two (2) vials of 50 ml of Benadryl from the Pyxis system (a computerized medication system) without a physician order. When questioned by a managing nurse about the diverted medications, she could not provide a reasonable explanation. Respondent appeared to be under the influence as demonstrated by Respondent's slurred speech, loss of memory and irrational responses when questioned. Respondent was asked to submit to a drug screen which she declined to provide. Respondent

1 resigned from Arrowhead Regional Medical Center a few days later while the matter was under  
2 investigation.

3 b. Thereafter, on or about May 23, 2012, following the Board's referral,  
4 Respondent enrolled in the Board's Diversion program, administered by Maximus. During an  
5 intake interview on May 10, 2012, Respondent admitted to Maximus counselors to abusing  
6 opiates for the last seven (7) years. She admitted to using Norco, Ativan and Valium. She also  
7 admitted to using Norco up until, and including, August 5, 2011. Respondent also admitted that  
8 she was hospitalized on or about May 14, 2011 for detoxification of Valium. On or about June 4,  
9 2012, Respondent missed a clinical assessment. On that same date, when a staff member of  
10 Maximus spoke with Respondent on the phone, Respondent had slurred speech, was incoherent,  
11 and admitted to use of Valium up to and including June 2, 2012.

## 12 SECOND CAUSE FOR DISCIPLINE

### 13 (Unlawfully Obtaining Controlled Substances)

14 22. Respondent is subject to disciplinary action under Business and Professions Code  
15 section 2761, subdivision (a), on grounds of unprofessional conduct, as defined in Business and  
16 Professions Code section 2762, subdivisions (a), for violating Health and Safety Code sections  
17 11170, 11171 and 11173, subdivision (a), and/or 11350 subdivision (a), by reason of the  
18 following:  
19

20 a. On or about January 26, 2012, while on duty as a registered nurse at the Arrowhead  
21 Regional Medical Center, Respondent unlawfully obtained two (2) vials of 50 ml of Benadryl  
22 from the Pyxis system without a doctor's order, as more fully set forth in paragraph 21 above.

## 23 PRAYER

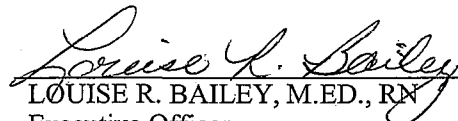
24 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
25 and that following the hearing, the Board of Registered Nursing issue a decision:

26 1. Revoking or suspending Registered Nurse License Number 600526, issued to Rhonda  
27 Ulibarri also known as Rhonda M. Ulibarri;  
28

1           2.     Ordering Rhonda Ulibarri also known as Rhonda M. Ulibarri to pay the Board of  
2 Registered Nursing the reasonable costs of the investigation and enforcement of this case,  
3 pursuant to Business and Professions Code section 125.3;

4           3.     Taking such other and further action as deemed necessary and proper.

5 DATED: September 20, 2012

  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

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